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Glenda K. Harnad, J.D.; Janice Holben, J.D.; Sonja Larsen, J.D. and Karl Oakes, J.D.

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Treatises and Practice Aids

As to what the Administrative Procedure Act is, generally, see [Federal Procedure, L. Ed., Administrative Procedure \[Westlaw®: Search Query\]](#)

The Federal Administrative Procedure Act¹ is a remedial statute,² designed to insure uniformity, impartiality, and fairness in the procedures employed by federal administrative agencies.³ Its enactment was meant to bring uniformity to a field full of variation and diversity.⁴ The Act does not create substantive rights on which a claim for relief can be based.⁵

The provisions of the Act embody a comprehensive regulatory scheme, governing such aspects of agency action as investigations,⁶ adjudications,⁷ rulemaking,⁸ licensing,⁹ and open meeting and disclosure requirements,¹⁰ as well as providing for judicial review of administrative proceedings.¹¹ Provision is also made for the representation of parties before administrative agencies.¹²

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Footnotes

¹ [5 U.S.C.A. §§ 551 to 559.](#)

² [Pan-Atlantic S. S. Corp. v. Atlantic Coast Line R. Co.](#), 353 U.S. 436, 77 S. Ct. 999, 1 L. Ed. 2d 963 (1957); [Home Loan Bank Bd. v. Mallonee](#), 196 F.2d 336 (9th Cir. 1952).

3 Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055, 39 L. Ed. 2d 270 (1974).

4 Dickinson v. Zurko, 527 U.S. 150, 119 S. Ct. 1816, 144 L. Ed. 2d 143 (1999).

5 Furlong v. Shalala, 156 F.3d 384 (2d Cir. 1998); Walker v. Secretary of Treasury, I.R.S., 713 F. Supp. 403 (N.D. Ga. 1989).

6 §§ 101 to 109.

7 §§ 258 to 262.

8 §§ 147 to 162.

9 §§ 241 to 257.

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Being a remedial statute,¹ the Federal Administrative Procedure Act² must be given a liberal interpretation,³ in the light of, and to give effect to, its purposes.⁴ The Act is not violative of the 14th Amendment to the United States Constitution.⁵

The provisions of the Act do not limit or repeal additional requirements imposed by statute or otherwise recognized by law.⁶ Even in circumstances where an adjudication is not required to be held pursuant to the provisions of the Act, as where the proceedings are not contemplated by or are beyond the scope of the Act, an agency is nevertheless constitutionally required to observe the essentials of due process.⁷ Similarly, even though the circumstances may be such that an agency is not required to comply with the hearing requirements of the Act, where the statute under which the agency is acting permits such action only “after hearing,” the agency is required to accord the hearing specified.⁸ It is always within an agency’s discretion to afford parties more procedure than required by the Act.⁹

Observation:

Subsequent statutes may not be held to supersede or modify the provisions of the Administrative Procedure Act except to the extent that they do so expressly.¹⁰ This provision forbids amendments of the Act by implication.¹¹

Footnotes

¹ § 11.

² 5 U.S.C.A. §§ 551 to 559.

³ Shaughnessy v. Pedreiro, 349 U.S. 48, 75 S. Ct. 591, 99 L. Ed. 868 (1955).

⁴ Pan-Atlantic S. S. Corp. v. Atlantic Coast Line R. Co., 353 U.S. 436, 77 S. Ct. 999, 1 L. Ed. 2d 963 (1957).

⁵ Silverton v. Department of Treasury, 449 F. Supp. 1004 (C.D. Cal. 1978), judgment aff'd, 644 F.2d 1341 (9th Cir. 1981).

⁶ 5 U.S.C.A. § 559.

⁷ U.S. v. Libby, McNeil & Libby, 14 Alaska 37, 107 F. Supp. 697 (Terr. Alaska 1952).
As to adjudications, generally, see §§ 258 to 382.

⁸ U.S. v. Florida East Coast Ry. Co., 410 U.S. 224, 93 S. Ct. 810, 35 L. Ed. 2d 223 (1973).

⁹ Chrysler Corp. v. Brown, 441 U.S. 281, 99 S. Ct. 1705, 60 L. Ed. 2d 208 (1979).

¹⁰ 5 U.S.C.A. § 559.

¹¹ Five Points Road Joint Venture v. Johanns, 542 F.3d 1121 (7th Cir. 2008).

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The Federal Administrative Procedure Act provides definitions of various terms used in the Act, including:¹

- agency
 - person
 - party
 - rule and rulemaking
 - order
 - adjudication
 - license and licensing
 - sanction
 - relief
 - agency proceeding
 - agency action
 - ex parte communication
- The definitions of terms included in the Federal Administrative Procedure Act may on occasion provide a basis for

determining what is meant by similar terms used in other statutes relating to administrative procedure.²

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Footnotes

¹ [5 U.S.C.A. § 551](#).

² [U.S. v. Florida East Coast Ry. Co., 410 U.S. 224, 93 S. Ct. 810, 35 L. Ed. 2d 223 \(1973\)](#).

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States have enacted administrative procedure statutes based on various Model Acts. The Model State Administrative Procedure Act was issued in 1981.¹ The Revised Model State Administrative Procedure Act was issued in 2010.²

Comment:

The 2010 Act is shorter and less detailed than the 1981 Act. The 2010 Act is designed to ensure fairness in administrative proceedings, increase public access to the law administered by agencies, and promote efficiency in agency proceedings by providing for the extensive use of electronic technology by state governments. The 2010 Act is streamlined when compared to the 1981 Act and has been drafted to be less detailed and less comprehensive.³

The 2010 Act provides for a uniform minimum set of procedures to be followed by agencies subject to the Act.⁴ The Act applies to an agency unless the agency is expressly exempted by a statute of the enacting state.⁵ The 2010 Act creates only procedural rights and imposes only procedural duties.⁶

Similarly, the 1981 revision of the Model Act states that it applies to all agencies and all proceedings not expressly exempted⁷ and that it creates only procedural rights and imposes only procedural duties.⁸ An administrative procedure statute thus does not create substantive legal rights on which a claim for relief can be based; rather, such substantive legal rights must exist either by statutory language, by the agency's rules and regulations, or by some constitutional command.⁹

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Footnotes

- ¹ Model State Administrative Procedure Act §§ 1-101 to 5-205 (1981).
- ² Revised Model State Administrative Procedure Act §§ 101 to 803 (2010).
- ³ Prefatory Note to: Revised Model State Administrative Procedure Act (2010).
- ⁴ Prefatory Note to: Revised Model State Administrative Procedure Act (2010).
- ⁵ Revised Model State Administrative Procedure Act § 103(a) (2010).
- ⁶ Prefatory Note to: Revised Model State Administrative Procedure Act (2010).
- ⁷ Model State Administrative Procedure Act § 1-103(a) (1981).
- ⁸ Model State Administrative Procedure Act § 1-103(b) (1981).
- ⁹ [Romer v. Board of County Com'rs of County of Pueblo, Colo., 956 P.2d 566 \(Colo. 1998\)](#), as modified on other grounds on denial of reh'g, (Apr. 27, 1998).

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§ 15. Purposes and functions

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A state administrative procedure act may have several purposes. Such an act may be designed to achieve uniformity among the various agencies of the State with respect to the development of suitable procedural safeguards¹ and to simplify the administrative process and provide the public with a more certain administrative procedure, thereby insuring that the public will receive due process and significantly improve the fairness of treatment.² Such an act seeks to balance a state's interest in efficient administration against individuals' interest in fairness.³ It provides a standard framework of fair and appropriate procedures for agencies that are responsible for both the administration and adjudication of their respective statutes.⁴ The passing of an administrative procedure statute will ensure that those persons or entities whom a regulation will affect have a voice in its creation, as well as notice of the law's requirements so that they can conform their conduct accordingly.⁵

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Footnotes

¹ [Villani v. Berle](#), 91 Misc. 2d 603, 398 N.Y.S.2d 796 (Sup 1977); [In re Board of County Com'rs, Sublette County](#), 2001 WY 91, 33 P.3d 107 (Wyo. 2001) (due process).

² [School Bd. of Palm Beach County v. Survivors Charter Schools, Inc.](#), 3 So. 3d 1220, 242 Ed. Law Rep. 962 (Fla. 2009).

³ [Department of Health and Mental Hygiene v. Chimes, Inc.](#), 343 Md. 336, 681 A.2d 484 (1996).

⁴ [Coleman v. Anne Arundel County Police Dept.](#), 369 Md. 108, 797 A.2d 770 (2002).

⁵ [Tidewater Marine Western, Inc. v. Bradshaw](#), 14 Cal. 4th 557, 59 Cal. Rptr. 2d 186, 927 P.2d 296 (1996).

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A state administrative procedure act ought to be construed to achieve the purposes intended by the legislature.¹ The legislature is assumed to have intended for all of the provisions in the state administrative procedure statute to have a field of operation.² If the act is applicable to a particular agency, both the act and statutes specific to that agency should be read together and harmonized to the extent possible; however, if a provision of the act and the agency's statute conflict, the agency-specific provision controls.³

Throughout the Revised Model State Administrative Procedure Act, there are provisions that refer generally to other state laws governing related topics. When specific state laws are inconsistent with the provisions of the 2010 Act, those specific state laws will be controlling.⁴

The 1981 version of the Model State Administrative Procedure Act states that the procedural rights and duties created by the Act are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by the Act, the other statute is superseded by the Act unless the other statute expressly provides otherwise.⁵ An agency may grant procedural rights to persons in addition to those conferred by the Act so long as rights conferred upon other persons by any provision of law are not substantially prejudiced.⁶

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Footnotes

¹ [Powell v. North Carolina Dept. of Transp.](#), 209 N.C. App. 284, 704 S.E.2d 547 (2011); [Basin Elec. Power Co-op. v. Bowen](#), 979 P.2d 503 (Wyo. 1999).

² [Ex parte Nixon](#), 729 So. 2d 277 (Ala. 1998).

³ [V Bar Ranch LLC v. Cotten, 233 P.3d 1200 \(Colo. 2010\).](#)

⁴ Prefatory Note to: Revised Model State Administrative Procedure Act (2010).

⁵ Model State Administrative Procedure Act § 1-103(b) (1981).

⁶ Model State Administrative Procedure Act § 1-103(c) (1981).

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Pursuant to the Model State Administrative Procedure Act, if any provision of the Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application. For this purpose, the provisions of the Act are severable.¹

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Footnotes

¹ Model State Administrative Procedure Act § 1-109 (1981).

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Both the Model Administrative Procedure Act and the Revised Model Administrative Procedure Act provide definitions of key terms used throughout the respective Acts. Both Acts define the following terms:¹

- agency
- agency action
- agency head
- license
- order
- party
- person
- law or provision of law
- rule and rulemaking

The list of definitions in the 2010 Act is a more extensive list than that provided in the 1981 Act.² Many of the new definitions result from the technological development of the Internet and the widespread use of electronic media by governmental entities.³

Footnotes

- ¹ Model State Administrative Procedure Act § 1-102 (1981); Revised Model State Administrative Procedure Act § 102 (2010).
- ² Revised Model State Administrative Procedure Act § 102(1) to (33) (2010).
- ³ Prefatory Note to: Revised Model State Administrative Procedure Act (2010).

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§ 19. Suspension of Act by Governor or Attorney General; emergency rule

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The 1981 version of the Model State Administrative Procedure Act provides that a state act may adopt a provision allowing or requiring the Governor by executive order or the Attorney General by rule, as the state statute designates, to suspend, in whole or in part, one or more provisions of the Act, to the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the State. The Governor by executive order or the Attorney General by rule must declare the termination of a suspension as soon as it is no longer necessary to prevent the loss of funds or services from the United States.¹ An executive order applicable to such suspension may be made subject to the requirements applicable to the adoption and effectiveness of a rule.² If any provision of the Act is so suspended, the Governor or the Attorney General must promptly report the suspension to the legislature or other designated authority. The report must include recommendations concerning any desirable legislation that may be necessary to conform the Act to federal law.³

Observation:

The Revised Model State Administrative Procedure Act invokes the emergency rule in this situation; if an agency finds that the loss of federal funding for an agency program requires the immediate adoption of an emergency rule and publishes in a record its reasons for that finding, the agency, without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable, may adopt an emergency rule without complying with the statutory requirements.⁴

Footnotes

¹ Model State Administrative Procedure Act § 1-104(a) (1981).

² Model State Administrative Procedure Act § 1-104(b) (1981).
As to requirements for the adoption and effectiveness of rules, see §§ [183](#) to [206](#).

³ Model State Administrative Procedure Act § 1-104(c) (1981).

⁴ Revised Model State Administrative Procedure Act § 309 (2010).

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